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Address all literary communications to the EDITOR-IN-CHIEF; all business communications to the TREASURER, Department of Law, University of Pennsylvania, Sixth and Chestnut Streets, Philadelphia, Pa.

TELEGRAPH COMPANIES; LIMITATION OF LIABILITY BY CONTRACT. In a recent case decided by the Supreme Court of Kentucky, *Western Union Tel. Co.* v. *Eubank*, 36 L. R. A. 711 (Feb., 1897), it was held that a contract limitation of sixty days, within which a claim must be presented in writing, for damages on account of the default of a telegraph company in respect to the transmission of a message, is unreasonable and contrary to public policy; and that if not an attempt to vary the statute of limitations, it would, if enforced, have that effect.

The court cited no authorities in support of its decision, but many cases are found in the books in which it has been declared that this time agreement has the effect of a statute of limitation, and in some jurisdictions similar regulations are construed to constitute a limitation of liability. In *Western Union Tel. Co.* v. *Longwill*, 21 Pac. (N. M.) 339 (1889), the court was of the opinion that it would introduce into the local jurisprudence of every state a species of private statute of limitation or non-claim, and would avoid the policy of the state in the matter of the time in which

actions, both in tort and contract, should be brought. In support of this view, see *Western Union Tel. Co.* v. *Cobb*, 47 Ark. 344 (1886); *Western Union Tel. Co.* v. *McKibben*, 114 Ind. 511 (1887); *Western Union Tel. Co.* v. *Way*, 83 Ala. 542 (1887); also, *Southern Express Co.* v. *Caperon*, 44 Ala. 101 (1870), in which a similar limitation was held to be unreasonable and void, as tending to fraud. In *Johnson* v. *Western Union Tel. Co.*, 33 Fed. (C. C. S. D. Ga.), 362 (1887), the stipulation was considered unreasonable, since its effect would be to preclude from the right of action the person to whom a prepaid telegram is directed and to whom it has never been delivered, no matter how gross the negligence of the company may be. The same conclusion is reached in *Hibbard* v. *Western Union Tel. Co.*, 33 Wis. 558 (1873); *Western Union Tel. Co.* v. *Griswold*, 37 Ohio, 301 (1881); *Western Union Tel. Co* v. *Coolidge*, 86 Ga. 104 (1890); and *Brown* v. *Postal Tel. Co.*, 17 L. R. A. (N. C.) 648 (1892).

In a dissenting opinion, in *Kirby* v. *Western Union Tel. Co.*, 30 L. R. A. (4 South Dakota, 105, 436), 612 (1893), Kellam, J., says that, admitting the reasonableness of the stipulation, it is, nevertheless, repugnant to public policy, since it allows the telegraph company to require a party to assent to such an agreement before it will undertake to perform its legal duty. The majority, however, held that the effect of the stipulation is not to create a new statute of limitation, since the action, after notice of claim served, may be brought any time within the period prescribed by law; and that the regulation is reasonable (since the difficulty of ascertaining facts increases with the lapse of time), and is, therefore, not an attempt to limit the company's common law or statutory liability. In *Western Union Tel. Co.* v. *Dougherty*, 54 Ark. 221 (1891), it was decided that such a stipulation was one against the delay or neglect of plaintiff in presenting his claim, and not unreasonable.

Sixty days have been held to be a reasonable time in *Western Union Tel. Co.* v. *Jones*, 95 Ind. 235 (1884); *Ellis* v. *American Tel. Co.*, 95 Mass. 226 (1866); *Breese* v. *U. S. Tel. Co.*, 48 N. Y. 132 (1873); *Southern Express Co.* v. *Caldwell*, 21 Howard, 264 (1874); *Wolf* v. *Western Union Tel. Co.*, 62 Pa. 83 (1869); *Young* v. *Western Union Tel. Co.*, 65 N. Y. 165 (1875); *Western Union Tel. Co.* v. *Raines*, 63 Tex. 27 (1885); and *Squire* v. *Western Union Tel. Co.*, 98 Mass. 232 (1867). The Supreme Court of Mississippi, in *Southern Express Co.* v. *Hunnicutt*, 54 Miss. 566 (1877), decided that a printed stipulation at the bottom of an express receipt for a package, that the company shall not be liable for any loss unless a written claim shall be made at the shipping office within thirty days, is valid. The same period was held to be a reasonable time in *Western Union Tel. Co.* v. *Durfield*, 11 Colo. 335 (1888); *Western Union Tel. Co.* v. *Culberson*, 79 Tex. 65 (1890); *Cole* v. *Western Union Tel. Co.*, 33 Minn. 228 (1885); *Massengale* v. *Western Union Tel. Co.*, 17 Mo. 257 (1885); and *Beasley* v. *Western Union Tel. Co.*, 39 Fed. (C. C. W. D. Tex.), 181 (1889).

AUCTION SALE—VALIDITY—EMPLOYMENT OF "PUFFERS." In *Broman* v. *McClenahan*, 46 N. Y. Suppl. 945 (Supreme Ct., Aug. 4, 1897) (See Progress of Law, 36 AM. L. REG. & REV. N. S. 175 (Nov. 1897)), it was decided that where the owner of a property puts it up at auction, and secretly employs "puffers" to bid in his behalf, a bidder at such sale to whom the property is struck off, can disaffirm his contract.

In England there were formerly two distinct lines of cases on this question. The common law courts followed the rule first laid down by Lord Mansfield in *Baxwell* v. *Christie*, Cowp. 395 (1776), where it was held that the employment of a "puffer" at an auction sale, rendered the sale void. The Court of Chancery, however, held that the hiring of a "puffer" was not a fraud and would not vitiate the sale: *Conolly* v. *Parsons*, 3 Ves. Jr. 625, note 1 (1797). Later the same court modified this rule by drawing a distinction between "puffing" in order to raise the price and "puffing" to protect the interests of the vendor. The former was held illegitimate while the latter was allowable: *Smith* v. *Clark*, 12 Ves. Jr. 477 (1806); *Flint* v. *Woodin*, 9 Hare, 618 (1852).

This conflict of opinion in England was ended in 1867 by an Act of Parliament, which declared "Whenever a sale by auction of land would be invalid at law by reason of the employment of a 'puffer,' the same shall be deemed invalid in equity as well as at law." So the law of England is now in accordance with the decision handed down in *Baxwell* v. *Christie* (*supra*). The Supreme Court of the United States follows the same rule: *Veazie* v. *Williams*, 8 How. 134 (1850).

In Pennsylvania the courts at first adopted the English Chancery rule, as modified in the later cases, and held that the employment of a "puffer" did not invalidate a sale if it was done solely to prevent a sacrifice of the property: *Steele* v. *Ellmaker*, 11 S. & R. 86 (1824). This case was subsequently overruled and it is now held that the employment of even one "puffer" is sufficient to avoid the sale: *Pennock's Appeal*, 14 Pa. 446 (1850); *Stames* v. *Shore*, 16 Pa. 200 (1851); *Yerkes* v. *Wilson*, 81 Pa. 9 (1870).

SEARCH WARRANT; MINISTERIAL OFFICERS. *State* v. *Guthrie*, 38 Atl. 368 (Me., June 16, 1897). The facts of this case are stated in the "Progress of the Law" of this issue; the precise point decided appears never to have been ruled upon previously and deserves further consideration. The point is, that a warrant to search for intoxicating liquors is void at the end of a reasonable time after it is given to the proper officer for execution (in this case, three days), and the officer's authority thereunder expires; what is such reasonable time being a question of law which depends upon the circumstances of each case. The court declares that it is a general principle of our law that "Ministerial officers assuming to execute a statute or process upon the property or person of a citizen shall execute it promptly, fully and precisely;" and that,

under the Maine Statute, promptly means immediately or within such time as the court deems reasonable under the circumstances.

It would seem that this conclusion should be reached independently of the interpretation of any statute, from the ministerial character of the officer executing a search-warrant. A ministerial officer has no discretion as to performance of the acts pertaining to his office: *Pennington* v. *Streight*, 54 Ind. 376 (1876); *Sullivan* v. *Shanklin*, 63 Cal. 251 (1883); 19 Amer. & Eng. Encyclo. Law 392. Having no such discretion he should perform the acts required of him by law, within a reasonable time as construed by a court; otherwise he might wait indefinitely, and thus practically *choose* not to act. This principle has been applied to ministerial acts, other than the execution of a search-warrant, as follows: Sheriffs and constables must execute process within a reasonable time, under the circumstances: *Lindsay's Exrs.* v. *Armfield*, 3 Hawk's (N. C.), 548 (1825); *Kittridge* v. *Bellows*, 7 N. H. 399 (1835); *Hallett* v. *Lee*, 3 Ala. 28 (1841); *Tucker* v. *Bradley*, 15 Conn. 46 (1842); *Whitney* v. *Butterfield*, 13 Cal. 335 (1859); *Hearn* v. *Parker*, 7 Jones (N. C.), 150 (1859); *Chapman* v. *Thornburgh*, 17 Cal. 87 (1860); *Phillips* v. *Ronald*, 3 Bush (Ky.), 244 (1867); *Freudenstein* v. *McNier*, 81 Ill. 208 (1876); *French* v. *Kemp*, 64 Ga. 749 (1880); *Elmore* v. *Hill*, 51 Wis. 365 (1881); *State* v. *Leland*, 82 Mo. 260 (1884); *Cowan* v. *Sloan*, 95 Tenn. 424 (1895); *Guiterman* v. *Sharvy*, 48 N. W. 780 (Minn.) (1891). A tax-collector must pay to the proper officer the money he collects, within a reasonable time; *Justices* v. *Fenimore*, *Coxe* (N. J.), 242 (1794); *Chenango* v. *Birdsall*, 4 Wend. (N. Y.) 453 (1830); *Sheridan* v. *Van Winkle*, 43 N. J. L. 125 (1881). An officer charged with the repair of highways must make repairs within a reasonable time: *Adsit* v. *Brady*, 4 Hill, (N. Y.) 630 (1843); *Hoover* v. *Barkhoof*, 44 N. Y. 113 (1870). A sheriff must set out a debtor's exemption: *Handy* v. *Sheriff*, 50 Mich. 355 (1883); and remove property levied upon: *Davis* v. *Stone*, 120 Mass. 228 (1876); *Williams* v. *Powell*, 101 Mass. 467 (1869); within a reasonable time. And it seems logical, as well as necessary to the protection of the citizen, to apply the same principle to the "sharp and heavy police weapon," the search-warrant.

NEGOTIABLE INSTRUMENTS; LIABILITY OF MAKER; FRAUD. The City Court of New York, in General Term, has decided that a party who is induced to sign a promissory note by fraud or deception practiced upon him by the payee, and signs it, thinking that it is a different kind of contract, is not liable thereon to an innocent indorsee for value before maturity, unless the maker was guilty of laches or carelessness in omitting to ascertain the true nature of the instrument: *Hutkoff* v. *Moje*, 46 N. Y. Suppl. 905 (July 2, 1897). See 36 AM. L. REG. & REV. (N. S.) 724. This is not a new rule in New York: *Bank* v. *Veneman*, 43 Hun. 241 (1887). But one who has all the means of information at hand,

and chooses to rely upon the representations of another as to the nature of the paper which the former is signing, is estopped by his negligence from setting up the fraud in obtaining the note as against a *bona fide* purchaser for value before maturity: *Chapman* v. *Rose*, 56 N. Y. 137 (1874).

There is rather a hopeless conflict of authorities regarding the liability of persons whose names appear on negotiable instruments, through fraud, when the paper is in the hands of *bona fide* holders. An attempt at reconciliation would be useless. There are many cases where persons have been induced by fraudulent representations to sign negotiable paper, intending and believing that they were signing some other form of contract. There is authority for the proposition, that in the absence of negligence on the part of such persons, they are not liable, even though the paper come into the hands of a *bona fide* purchaser for value before maturity: *Taylor* v. *Atchinson*, 54 Ill. 196 (1870); *Puffer* v. *Smith*, 57 Ill. 527 (1871); *Anderson* v. *Walter*, 34 Mich. 113 (1876); *Bank* v. *Lierman*, 5 Neb. 247 (1876); *Griffiths* v. *Kellogg*, 39 Wis. 290 (1876); *Green* v. *Wilkie*, 66 N. W. 1046 (Iowa, 1896). And this would seem to be because there was no contract originally, inasmuch as the person so signing had no intention of signing such a paper: *Walker* v. *Ebert*, 29 Wis. 194 (1871). But it is necessary for the maker to show freedom from negligence: *Bank* v. *Steffes*, 54 Iowa, 214 (1880). However, if the fraud be made possible by the negligence or carelessness of the maker, he is liable to a *bona fide* holder: *Garrard* v. *Haddan*, 67 Pa. 82 (1870); *Douglass* v. *Matting*, 29 Iowa, 498 (1870). In any case, however, the *bona fide* holder of a negotiable instrument, fraudulent in its inception, can recover from the maker only so much as the former paid for it: *Beckhous* v. *Bank*, 22 W. N. C. (Pa.), 53 (1888); *Oppenheimer* v. *F. & M. Bank*, 36 S. W. (Tenn.), 705 (1896).

On the other hand, it has been decided that it is no defence to an action by a *bona fide* holder against the maker of a note that the latter was induced to sign it by fraud: *Broadbent* v. *Huddleson*, 2 W. N. C. (Pa.), 293 (1876); *Bank* v. *McCann*, 11 Id. 480 (1882); *Highsmith* v. *Martin*, 24 S. E. (Ga.), 865 (1896). Nor can such a note be invalidated in the hands of a *bona fide* holder unless actual fraud can be shown on his part: *Matthews* v. *Poythress*, 4 Ga. 287 (1848); *Worcester Bank* v. *Dorchester Bank*, 10 Cush. (Mass.) 488 (1853); *Crosly* v. *Grant*, 36 N. H. 273 (1858); *Bank* v. *Hoge*, 7 Bosw. (N. Y. Superior Ct.), 543 (1861); *Magee* v. *Badger*, 34 N. Y. 247 (1866); *Hamilton* v. *Vought*, 34 N. J. L. 187 (1870); *Bank* v. *Hewitt*, 34 Atl. (N. J.), 988 (1896). But the holder of such a note has the burden of proving his good faith: *Hardware Co.* v. *Bank*, 109 Pa. 240 (1885); *Hale* v. *Shamon*, 57 Hun, (N. Y.) 466 (1890); *Jones* v. *Burden*, 56 Mo. App. 199 (1893); *Campbell* v. *Huff*, 31 S. W. (Mo.), 603 (1895); *Hodson* v. *Glass Co.*, 40 N. E. (Ill.), 971 (1895); *Fawcett* v. *Powell*,

43 Neb. 437 (1895); *Thamling* v. *Duffy*, 37 Pac. (Mont.), 363 (1895).

ALIENS; TAXATION; EQUAL PROTECTION OF LAWS. The United States Circuit Court for the Western District of Pennsylvania, per Acheson, J., recently declared the Pennsylvania Alien Tax Law unconstitutional: *Fraser* v. *McConway & Sorley Co.*, 54 Leg. Int. 364, 6 Dist. R. 555 (Aug. 26, 1897).

The act in question imposed upon employers of alien laborers a tax "at the rate of three cents per day for each day each of such foreign-born, unnaturalized male persons may be employed," and authorized the employer to deduct the amount of the tax from the wages of the employee. This latter provision made the tax really upon the employee and not on the employer: *Bell's Gap R.* v. *Pa.*, 134 U. S. 232, 239 (1889), in which it was said that a tax laid on a railroad corporation, to be paid out of the interest of its bonds, is a tax on the bondholder and not on the corporation. The case thus falls squarely under the Fourteenth Amendment, the guarantees of which "extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, color, or nationality:" Matthews, J., in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369 (1886).

Some of the western states have adopted ingenious methods of discriminating against the Chinese, the particular class of aliens especially hated in the mining districts. They have cloaked their taxation in the guise of a license system for certain classes of business, putting a "license" of $25 on hand laundrymen employing one or more other persons, while requiring steam laundries to pay a fee of $15 only: *State ex rel. Foi* v. *French*, 17 Mont. 54 (1895). The law was held valid because in terms it applied to all male laundrymen of every condition and nationality, the court remarking: "The fact that Chinamen are engaged in the hand-laundry business is purely fortuitous." See this case in 30 L. R. A. 415, where it is fully annotated. But where the aliens obnoxious to the legislature have not engaged in one kind of business exclusively, it would seem that all opportunities for discriminating against them in taxation are barred by the Fourteenth Amendment.

Gulf, C. & S. F. R. v. *Ellis*, 165 U. S. 150, 165 (1897) declares that classification for purposes of taxation must have a reasonable basis. In that case the State of Texas had by law allowed parties having a valid claim against a railroad corporation to recover the amount of the claim *plus attorney's fees*. This was held an unreasonable discrimination against the railroads. In *R. R. Tax Cases*, 13 Fed. 722 (1882) a law taxing property in general at a reduction from face value, but assessing taxes on railroad property at its actual worth, was decided to be unconstitutional.